IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5143 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VASNAT HARILAL @ BABUBHAI SONI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 2-9-1999 passed by the District Magistrate, Kutch-Bhuj and he has been declared as bootlegger as well as dangerous person.

2. Heard learned advocate for the petitioner and

learned APP for the State. Also perused the material on record. Learned advocate for the petitioner has mainly argued that a representation has been sent by the petitioner through jail authority on 23-3-2000 and the same has been received by the District Magistrate on 26-3-2000 and thereafter, a communication has been received on 5-4-2000 wherein according to the petitioner, it has been mentioned by the authority that his representation dated 23-3-2000 has been rejected by the District Magistrate on 5-4-2000 and hence, there is a delay of 10 days in deciding the representation. It is also pointed out by the learned advocate for the petitioner that order has been approved by the authority and thereafter, the District Magistrate has rejected the representation on 5-4-2000 for which, no jurisdiction has been conferred upon him. Learned AGP has verified the same and on instructions he has stated that the representation dated 5-4-2000 has been rejected after the approval of the order by the State Govt.

3. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

"Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

4. In the present case, no explanation has been putforward by the authority explaining satisfactorily the delay caused in deciding the representation. In view of the above judgment of the Apex Court, the continued detention of the detenu is bad and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. The petition is allowed. The impugned order of detention dated 2-9-1999 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Vasant Harilal @ Babubhai Soni is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)
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